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Attorney for Plaintiffs
MARC JACOBS TRADEMARKS, LLC, and
MARC JACOBS INTERNATIONAL, LLC

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MARC JACOBS TRADEMARKS,
LLC, a Delaware limited liability
company, and MARC JACOBS
INTERNATIONAL, LLC, a Delaware
limited liability company,

Plaintiffs,

v.

NERVOUS TATTOO, INC., doing
business as ED HARDY, a California
corporation, HARDY WAY, LLC, a
Delaware limited liability company, and
THE CALIFORNIA BAG, LLC, a
California limited liability company,

Defendants.

Case No: **CV 10-00456-CBM(FMO)**
COMPLAINT FOR:

1. **TRADE DRESS INFRINGEMENT,
FEDERAL UNFAIR
COMPETITION, AND FALSE
DESIGNATION OF ORIGIN (15
U.S.C. § 1125(a));**
2. **FEDERAL UNFAIR
COMPETITION AND FALSE
DESIGNATION OF ORIGIN (15
U.S.C. § 1125(a));**
3. **STATE STATUTORY AND
COMMON LAW UNFAIR
COMPETITION (Cal. Bus. & Prof.
Code §§ 17200 et seq.); and**
4. **CONSTRUCTIVE TRUST.**

1 Plaintiffs MARC JACOBS TRADEMARKS, LLC (hereinafter "MJT") and
2 MARC JACOBS INTERNATIONAL, LLC (hereinafter "MJI") (MJT and MJI are
3 hereinafter collectively referred to as "Plaintiffs"), through their attorneys,
4 complaining of defendants THE CALIFORNIA BAG, LLC, NERVOUS TATTOO,
5 INC., doing business as ED HARDY, and HARDY WAY, LLC (collectively,
6 "Defendants"), allege as follows:

8 **STATEMENT OF THE CASE**

9 1. This is an action for injunctive relief and profits under the Lanham Act
10 and the common law based on Defendants' offering for sale, sale, and distribution of
11 products that infringe i) the unique and distinctive trade dress of Marc Jacobs' Marc
12 Jacobs Pretty Nylon tote bag and ii) the Marc Jacobs Scrambled Trademark.

13 **JURISDICTION AND VENUE**

14 2. Plaintiffs' claims arise under the Trademark Act of 1946, 15 U.S.C. §
15 1051, *et seq.*, particularly under 15 U.S.C. § 1125(a), and California Business and
16 Professions Code Sections 17200 *et seq.* This Court has original subject matter
17 jurisdiction over Plaintiffs' federal claims pursuant to the provisions of 28 U.S.C. §§
18 1331 and 1338(a) and (b), and 15 U.S.C. §§ 1116 and 1121. This Court has
19 supplemental jurisdiction over the claims in this Complaint which arise under state
20 statutory and common law pursuant to 28 U.S.C. § 1367(a), since the state law claims
21 are so related to the federal claims that they form part of the same case or controversy
22 and derive from a common nucleus of operative facts.

23 3. This Court has specific personal jurisdiction over Defendants as
24 Defendants have committed, within the State of California, the acts from which these
25 claims arise. The Court also has general personal jurisdiction over Defendants as
26 Defendants conduct continuous, systematic and routine business within the State of
27 California and the County of Los Angeles.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

5. MJT is a limited liability company organized under the laws of the State of Delaware with its principal place of business in the United States located at 72 Spring Street, New York, New York 10012.

6. MJI is a limited liability company organized under the laws of the State of Delaware with its principal place of business in the United States located at 72 Spring Street, New York, New York 10012.

7. Plaintiffs are, in part, engaged in the business of manufacturing and distributing throughout the world, including within this judicial district, high quality handbags, including handbags bearing the Marc Jacobs Scrambled Trademark and the Marc Jacobs Pretty Nylon Tote Trade Dress (defined below).

8. Plaintiffs are informed and believe and thereupon allege that at all times relevant hereto Defendant Nervous Tattoo, Inc., is a California corporation that does business in this judicial district under its name and under the name "Ed Hardy", and has a principal place of business at 8680 Hayden Place, Culver City, California 90232.

9. Plaintiffs are informed and believe and thereupon allege that at all times relevant hereto Defendant Hardy Way, LLC, is a Delaware limited liability company maintaining its principal place of business at 8680 Hayden Place, Culver City, California 90232.

10. Plaintiffs are informed and believe and thereupon allege that at all times relevant hereto Defendant The California Bag, LLC is a California limited liability company maintaining its principal place of business at 433 S. Spring Street, Suite 1100, Los Angeles, California 90013.

11. Plaintiffs are informed and believe and thereupon allege that at all times relevant hereto Defendants are and have been doing business in this judicial district and the State of California and are and have imported, advertised, distributed, offered

for sale, and/or sold products wrongfully bearing infringements of Plaintiffs' distinctive Marc Jacobs Scrambled Trademark and Marc Jacobs Pretty Nylon Tote Trade Dress. Specifically, Defendants are advertising, distributing, offering for sale, and selling women's handbags wrongfully infringing Plaintiffs' Marc Jacobs Scrambled Trademark and Marc Jacobs Pretty Nylon Tote Trade Dress in this State and in this judicial district.

PLAINTIFFS' ACTIVITIES

12. MJT is the owner of numerous federally registered trademarks including the following United States Federal Trademark Registrations:

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
MARC JACOBS	1,967,123	April 9, 1996
MARC BY MARC JACOBS	3,699,162	October 20, 2009

13. MJT is the owner of the following application to register its Marc Jacobs Scramble, consisting of repeating pattern of stylized lettering of the MARC JACOBS trademark on a background, for a variety of goods, including handbags: USPTO Serial No. 79057254. True and correct copies of printouts from the USPTO's website reflecting the aforementioned registrations and application are attached hereto as **Exhibit 1.**

14. MJI is the exclusive licensee of the foregoing marks, as well as the Marc Jacobs Pretty Nylon Tote Trade Dress (defined below).

15. In early 2006, Plaintiffs began marketing, distributing, offering for sale and selling products bearing the Marc Jacobs Scrambled Trademark.

16. Since at least as early as 2007, Plaintiffs have marketed and sold the Marc Jacobs Pretty Nylon tote bag.

17. The design and ornamentation of the Marc Jacobs Pretty Nylon tote bag, including without limitation the total image and overall appearance reflected in such features as the size, shape, color or color combinations, product design, texture, and

1 selection and arrangement of materials and accessories, are distinctive and non-
2 functional (hereinafter these features are collectively referred to as the "Marc Jacobs
3 Pretty Nylon Tote Trade Dress"). True and correct copies of photographs of an
4 authentic Marc Jacobs Pretty Nylon tote bag bearing the Marc Jacobs Pretty Nylon
5 Tote Trade Dress are attached hereto as **Exhibit 2**.

6 18. Plaintiffs have sold in excess of ten million dollars worth of products
7 bearing the Marc Jacobs Scrambled Trademark, including the Marc Jacobs Pretty
8 Nylon Tote Bags. These products have been extensively advertised and marketed in
9 the United States and worldwide.

10 19. The Marc Jacobs Scrambled Trademark and the Marc Jacobs Pretty
11 Nylon Tote Trade Dress, and the goodwill of Plaintiffs' businesses in connection
12 thereto, are in full force and effect and have never been abandoned.

13 20. Marc Jacobs' Marc Jacobs Pretty Nylon tote bags bearing the Marc
14 Jacobs Pretty Nylon Tote Trade Dress, by reason of their style, distinctive designs and
15 craftsmanship have come to be known by the purchasing public throughout the United
16 States as being of the highest quality. As a result thereof, the Marc Jacobs Pretty
17 Nylon Tote Trade Dress, and the goodwill associated therewith, are of inestimable
18 value to Plaintiffs.

19 21. The Marc Jacobs Scrambled Trademark has come to be known by the
20 purchasing public throughout the United States as representing products of the highest
21 quality. As a result thereof, the Marc Jacobs Scrambled Trademark, the goodwill
22 associated therewith, are of inestimable value to Plaintiffs.

23 22. Through Plaintiffs' efforts, Plaintiffs succeeded in producing a product
24 that placed Plaintiffs' bags among the trendiest and most sought-after bags in the
25 United States market.

26 23. The major media coverage that the Marc Jacobs Pretty Nylon tote bags
27 have received and continue to receive has firmly established the Marc Jacobs Pretty
28

1 Nylon Tote Trade Dress as a unique indicator of Plaintiffs as the source of origin of its
2 distinctive Marc Jacobs Pretty Nylon tote bags.

3 24. The Marc Jacobs Pretty Nylon tote bags have been reviewed in high-
4 profile fashion and consumer magazines, as well as featured in articles.

5 25. Based on the extensive sales of Plaintiffs' bags and their wide popularity,
6 the Marc Jacobs Pretty Nylon Tote Trade Dress has developed a secondary meaning
7 and significance in the minds of the purchasing public, and the Marc Jacobs Pretty
8 Nylon tote bags bearing such trade dress are immediately identified by the public with
9 Plaintiffs.

10 26. Based on the extensive sales of Plaintiffs' products bearing the Marc
11 Jacobs Scrambled Trademark and their wide popularity, the Marc Jacobs Scrambled
12 Trademark has developed a secondary meaning and significance in the minds of the
13 purchasing public, and the Marc Jacobs Scrambled Trademark is immediately
14 identified by the public with Plaintiffs.

15 27. Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress and Marc Jacobs
16 Scrambled Trademark are vital to Plaintiffs and Plaintiffs will suffer irreparable harm
17 if any third parties, including Defendants herein, are allowed to continue
18 manufacturing and selling infringing goods bearing trade dress that unlawfully copies
19 and imitates Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress and unlawfully
20 bear marks that are confusingly similar to the Marc Jacobs Scrambled Trademark.

21 **DEFENDANTS' INFRINGING ACTIVITIES**

22 28. Upon information and belief, Defendants have infringed, are infringing,
23 and will continue to infringe Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress
24 and Marc Jacobs Scrambled Trademark by advertising, distributing, selling and/or
25 offering for sale unauthorized products that bear trade dress that unlawfully copies or
26 imitates Plaintiffs' unique, distinctive, and non-functional Marc Jacobs Pretty Nylon
27 Tote Trade Dress and/or that unlawfully bear marks confusingly similar to the Marc
28 Jacobs Scrambled Trademark (hereinafter Defendants' "Infringing Products").

1
2 29. Plaintiffs state upon information and belief and thereupon allege that
3 Defendants have, are, and will continue to advertise, distribute, sell and/or offer for
4 sale Defendants' Infringing Products. True and correct copies of photographs of
5 representative samples of Defendants' Infringing Products are attached hereto as
6 **Exhibit 3.**

7 30. Long after Plaintiffs' adoption and use of their Marc Jacobs Pretty Nylon
8 Tote Trade Dress on their Marc Jacobs Pretty Nylon tote bags, and long after
9 Plaintiffs' adoption and use of their Marc Jacobs Scrambled Trademark, Defendants,
10 on information and belief, commenced the distribution, advertisement, offer for sale,
11 and/or sale of handbags bearing infringements of Plaintiffs' Marc Jacobs Pretty Nylon
12 Tote Trade Dress and Marc Jacobs Scrambled Trademark. True and correct copies of
13 photographs comparing Marc Jacobs Pretty Nylon tote bags bearing Plaintiffs'
14 authentic Marc by Marc Jacobs Trade Dress and the Marc Jacobs Scrambled
15 Trademark with Defendants' Infringing Products, are attached hereto as **Exhibit 4.**

16 31. Defendants have, are, and will continue to distribute, advertise, offer for
17 sale, and sell their unauthorized products in this judicial district and throughout the
18 United States.

19 32. The manufacture, distribution, advertisement, offer for sale, and sale of
20 Defendants' Infringing Products was not authorized or approved by Plaintiffs.

21 33. Upon information and belief, the activities of Defendants complained of
22 herein constitute willful and intentional infringement of the Marc Jacobs Pretty Nylon
23 Tote Trade Dress and Marc Jacobs Scrambled Trademark; are in total disregard of the
24 Plaintiffs' rights; and were commenced and have continued despite Plaintiffs
25 specifically having notified Defendants of Plaintiffs' rights and Defendants' alleged
26 infringement, and despite Defendants' knowledge that the use of the Marc Jacobs
27 Scrambled Trademark and/or Marc Jacobs Pretty Nylon Tote Trade Dress, or copies
28 or colorable imitations thereof, was and is in direct contravention of Plaintiffs' rights.

34. Defendants' use of a copy or colorable imitation of the Marc Jacobs Pretty Nylon Tote Trade Dress and the Marc Jacobs Scrambled Trademark has been without Plaintiffs' consent, is likely to cause confusion and mistake in the minds of the purchasing public, and has damaged and is damaging Plaintiffs' valuable intellectual property rights by creating the false impression that Defendants and/or Defendants' Infringing Products are authorized, sponsored, or approved by Plaintiffs when, in fact, they are not.

FIRST CLAIM FOR RELIEF

(Trade Dress Infringement, Federal Unfair Competition and False Designation of Origin)

[15 U.S.C. § 1125(a)]

[With Respect to Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress]

35. Plaintiffs incorporate all prior allegations as if set forth fully herein.

36. Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress has a unique, distinctive, non-functional style and unique, distinctive, non-functional characteristics. The Marc Jacobs Pretty Nylon Tote Trade Dress (see Exhibit 2) includes without limitation:

- a. stylized quilted-tote fabric exterior, height 31 cm, width 33 cm, and depth 11 cm;
- b. detailed stitching on the quilt panels with Plaintiffs' name and mark;
- c. Two knotted fabric handles;
- d. Vertical exterior quilted pocket;
- e. Distinctive metal plaque on the front exterior of the bag placed on a fabric rectangle which is stitched in the same thread color as the bag color;
- f. No closure mechanism;
- g. Inside zip pocket;

1 h. Black and white logo fabric lining, bearing Plaintiffs' Marc Jacobs
2 Scrambled Trademark;

3 i. Tone on tone stitching; and

4 j. The unique, distinctive overall look and feel achieved by the style
5 and arrangement of the individual components identified in a-i, above.

6 37. Comparisons of Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress
7 with the trade dress of Defendant' Infringing Products are attached hereto as Exhibit
8 4.

9 38. Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress is known for, and
10 recognized by, relevant consumers and the trade for the specific details identified
11 hereinabove, as well as the overall look and feel contributing to the total image of
12 Plaintiffs' Marc Jacobs Pretty Nylon tote bags that use and incorporate the Marc
13 Jacobs Pretty Nylon Tote Trade Dress.

14 39. The characteristics, alone or in combination, of Plaintiffs' Marc Jacobs
15 Pretty Nylon Tote Trade Dress have come to identify Plaintiffs as their source of
16 origin, thus serving as protectable trade dress.

17 40. The Marc Jacobs Pretty Nylon Tote Trade Dress is unique, distinctive
18 and non-functional. If any utility exists, it is not essential to the purpose, quality or
19 source identifying attributes of Plaintiffs' Marc Jacobs Pretty Nylon tote bags.

20 41. The Marc Jacobs Pretty Nylon Tote Trade Dress used in connection with
21 Plaintiffs' Marc Jacobs Pretty Nylon tote bags is inherently distinctive and has
22 acquired distinction within the meaning of the Lanham Act.

23 42. Defendants' creation, production, offering for sale, sale, advertisement
24 and distribution of Defendants' Infringing Products, which use trade dress that is
25 confusingly similar to the Marc Jacobs Pretty Nylon Tote Trade Dress, has been and is
26 without Plaintiffs' permission or consent, and constitutes designation of a term,
27 symbol, device, or combination thereof, that is false or misleading within the meaning
28 of 15 U.S.C. § 1125.

1 43. Plaintiffs have suffered harm as a result of Defendants' acts.

2 44. Defendants' conduct has been intentional and willful, calculated
3 specifically to trade off of the goodwill that Plaintiffs have developed in their
4 successful Marc Jacobs Pretty Nylon tote bags. By their aforesaid acts, particularly
5 Defendants' imitation of the unique, distinctive and non-functional features of the
6 Marc Jacobs Pretty Nylon Tote Trade Dress that Plaintiffs use in connection with its
7 Marc Jacobs Pretty Nylon tote bags, which are sold and distributed in interstate
8 commerce and in this judicial district, Defendants have infringed and are likely to
9 continue to infringe on Plaintiffs' substantial rights in and to the Marc Jacobs Pretty
10 Nylon Tote Trade Dress. In so doing, Defendants have represented and designated
11 falsely to the public generally, and to relevant consumers specifically, the source of
12 origin of Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress in violation of
13 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

14 45. Defendants' Infringing Products constitute false descriptions and
15 representations tending to falsely describe or represent Defendants and Defendants'
16 Infringing Products as being authorized, sponsored, affiliated or associated with
17 Plaintiffs, when in fact they are not.

18 46. Defendants use copies and colorable imitations of the Marc Jacobs Pretty
19 Nylon Tote Trade Dress on Defendants' Infringing Products with the express intent to
20 cause confusion and mistake, to deceive and mislead the purchasing public, to trade
21 upon Plaintiffs' reputation for producing goods of the highest quality, and to
22 improperly appropriate to themselves Plaintiffs' valuable intellectual property rights.

23 47. Plaintiffs have been damaged by, and Defendants have profited from,
24 Defendants' wrongful conduct in an amount to be proven at trial.

25 48. For each act of infringement, Plaintiffs are entitled to recover their actual
26 damages, as well as Defendants' profits from such infringement.

27 49. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs
28 incurred in this action.

50. Monetary relief alone, however, is not adequate to address fully the irreparable injury that Defendants' wrongful acts have caused and will continue to cause to Plaintiffs if such acts are not enjoined by this Court. Plaintiffs are therefore entitled to preliminary and permanent injunctive relief to stop Defendants' ongoing infringement of Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress.

SECOND CLAIM FOR RELIEF

(Federal Unfair Competition and False Designation of Origin)

[15 U.S.C. § 1125(a)]

[With Respect to Plaintiffs' Marc Jacobs Scrambled Trademark]

51. Plaintiffs incorporate all prior allegations as if set forth fully herein.

52. The Marc Jacobs Scrambled Trademark has come to identify Plaintiffs as the source of origin of products bearing the mark.

53. The Marc Jacobs Scrambled Trademark is unique, inherently distinctive, and non-functional, and has acquired distinction within the meaning of the Lanham Act.

54. Defendants' creation, production, offering for sale, sale, advertisement and distribution of Defendants' Infringing Products, which use trademarks that are confusingly similar to the Marc Jacobs Scrambled Trademark, has been and is without Plaintiffs' permission or consent, and constitutes designation of a term, symbol, device, or combination thereof, that is false or misleading within the meaning of 15 U.S.C. § 1125.

55. Plaintiffs have suffered harm as a result of Defendants' acts.

56. Defendants' conduct has been intentional and willful, calculated specifically to trade off of the goodwill that Plaintiffs have developed in their successful Marc Jacobs Scrambled Trademark. By Defendants' sale of products bearing marks confusingly similar to the unique, distinctive, and non-functional Marc Jacobs Scrambled Trademark, Defendants have infringed and are continuing to infringe on Plaintiffs' substantial rights in and to the Marc Jacobs Scrambled

1 Trademark. In so doing, Defendants have represented and designated falsely to the
2 public generally, and to relevant consumers specifically, the source of origin of
3 Plaintiffs' Marc Jacobs Scrambled Trademark in violation of Section 43(a) of the
4 Lanham Act, 15 U.S.C. § 1125(a).

5 57. Defendants' Infringing Products constitute false descriptions and
6 representations tending to falsely describe or represent Defendants and Defendants'
7 Infringing Products as being authorized, sponsored, affiliated or associated with
8 Plaintiffs, when in fact they are not.

9 58. Defendants use copies and colorable imitations of the Marc Jacobs
10 Scrambled Trademark on Defendants' Infringing Products with the express intent to
11 cause confusion and mistake, to deceive and mislead the purchasing public, to trade
12 upon Plaintiffs' reputation for producing goods of the highest quality, and to
13 improperly appropriate to themselves Plaintiffs' valuable intellectual property rights.

14 59. Plaintiffs have been damaged by, and Defendants have profited from,
15 Defendants' wrongful conduct in an amount to be proven at trial.

16 60. For each act of infringement, Plaintiffs are entitled to recover their actual
17 damages, as well as Defendants' profits from such infringement.

18 61. Plaintiffs are entitled to recover their reasonable attorneys' fees and costs
19 incurred in this action.

20 62. Monetary relief alone, however, is not adequate to address fully the
21 irreparable injury that Defendants' wrongful acts have caused and will continue to
22 cause to Plaintiffs if such acts are not enjoined by this Court. Plaintiffs are therefore
23 entitled to preliminary and permanent injunctive relief to stop Defendants' ongoing
24 infringement of Plaintiffs' Marc Jacobs Scrambled Trademark.

THIRD CLAIM FOR RELIEF

(State Statutory and Common Law Unfair Competition)

[Cal. Bus. & Prof. Code §§ 17200 et seq.]

63. Plaintiffs incorporate all prior allegations as if set forth fully herein.

64. This claim arises under California Business and Professions Code sections 17200 *et seq.* and the common law of the State of California. This Court has jurisdiction over the subject matter of this claim pursuant to the provisions of 28 U.S.C. § 1338(b), this being a claim of unfair competition joined with a substantial and related claim under the Trademark Laws of the United States, and under 28 U.S.C. § 1367.

65. Plaintiffs are the owners of all rights, title, and interest in the Marc Jacobs Pretty Nylon Tote Trade Dress and Marc Jacobs Scrambled Trademark and the common law rights associated thereto.

66. Plaintiffs state upon information and belief and thereupon allege that Defendants have intentionally appropriated the Marc Jacobs Pretty Nylon Tote Trade Dress, Marc Jacobs Scrambled Trademark, and/or Plaintiffs' common law rights associated therewith, with the intent of causing confusion, mistake, and deception as to the source of their goods with the intent to palm off their goods as those of Plaintiffs and to place others in the position to palm off their goods as those of Plaintiffs.

67. Defendants have deliberately, with full knowledge of Plaintiffs' rights, imitated and mimicked the unique, distinctive and non-functional design, size, shape, color or color combinations, product design, texture, and selection and arrangement of Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress.

68. Defendants have deliberately, with full knowledge of Plaintiffs' rights, imitated and mimicked the unique, distinctive and non-functional Marc Jacobs Scrambled Trademark.

1 69. Defendants have committed and continue to commit their wrongful acts
2 with the willful and deliberate intent to deceive consumers, to cause confusion and
3 mistake, and to interfere with consumers' ability to identify the source of Defendants'
4 Infringing Products by the appearance of such products' trade dress, which imitate
5 Plaintiffs' authentic Marc Jacobs Pretty Nylon Tote Trade Dress, and by the use of a
6 mark confusingly similar to the Marc Jacobs Scrambled Trademark.

7 70. Plaintiffs state upon information and belief and thereupon allege that
8 Defendants have particularly and deliberately poached upon the magnetism and
9 commercial success of the Marc Jacobs Pretty Nylon Tote Trade Dress and Marc
10 Jacobs Scrambled Trademark by trading upon Plaintiffs' goodwill and reputation
11 derived therefrom.

12 71. Plaintiffs state upon information and belief and thereupon allege that
13 Defendants' acts, alone, in combination, or in totality, constitute unfair competition in
14 violation of the laws of the State of California and specifically California Business
15 and Professions Code sections 17200 *et seq.*

16 72. Defendants have derived substantial monetary and non-monetary benefit
17 and business advantage as a direct result of their infringement of Plaintiffs' Marc
18 Jacobs Pretty Nylon Tote Trade Dress and Marc Jacobs Scrambled Trademark. In
19 addition, Defendants have wrongfully diverted profits away from Plaintiffs and to
20 Defendants, and, on information and belief, deprived Plaintiffs of the patronage of a
21 large number of actual and potential customers.

22 73. Plaintiffs have been damaged by, and Defendants have profited from,
23 Defendants' wrongful conduct in an amount to be proven at trial.

24 74. Monetary relief alone, however, is not adequate to address fully the
25 irreparable injury that Defendants' wrongful acts have caused and will continue to
26 cause to Plaintiffs if such acts are not enjoined by this Court. Plaintiffs are therefore
27 entitled to preliminary and permanent injunctive relief to stop Defendants' ongoing
28

1 infringement of Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress and Marc
2 Jacobs Scrambled Trademark.

3 **FOURTH CLAIM FOR RELIEF**

4 **CONSTRUCTIVE TRUST**

5 **[Cal. Civ. Code § 2224]**

6 75. Plaintiffs incorporate all prior allegations as if set forth fully herein.

7 76. This claim arises under California Civil Code § 2224 and the common
8 law of the State of California. This Court has jurisdiction over the subject matter of
9 this claim pursuant to the provisions of 28 U.S.C. § 1338(b), this being a claim of
10 constructive trust joined with a substantial and related claim under the Trademark
11 Laws of the United States, and under 28 U.S.C. § 1367.

12 77. Plaintiffs state upon information and belief and thereupon allege that
13 Defendants own and/or possess tangible real and/or personal properties and assets
14 including, but not limited to, bank, savings, and/or other financial accounts, consisting
15 of and/or obtained by profit derived from Defendants' unauthorized manufacture,
16 distribution, and/or sale of Defendants' Infringing Products.

17 78. Plaintiffs are entitled to the profits Defendants have derived from the
18 infringement of the Marc Jacobs Pretty Nylon Tote Trade Dress and Scrambled
19 Trademark under 15 U.S.C. §§ 1125 et seq.

20 79. Plaintiffs have no adequate remedy at law and have suffered irreparable
21 harm and damage as a result of Defendants' acts as aforementioned. Defendants hold
22 those tangible real and/or personal properties and assets consisting of and/or obtained
23 by profit derived from Defendants' infringing activities as constructive trustee for the
24 benefit of Plaintiffs in an amount thus far not determined.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs demand judgment against the Defendants as
27 follows:
28

1 1. That a preliminary and permanent injunction be issued enjoining and
2 restraining Defendants and their officers, agents, servants, employees and attorneys
3 and all those in active concert or participation with them, from:

- 4 A. Using any reproduction, copy or colorable imitation of the Marc
5 Jacobs Pretty Nylon Tote Trade Dress or Marc Jacobs Scrambled
6 Trademark to identify any goods or the rendering of any services
7 not authorized by Plaintiffs;
- 8 B. Engaging in any course of conduct likely to cause confusion,
9 deception or mistake, or to injure Plaintiffs' business reputations or
10 dilute the distinctive quality of Plaintiffs' names or Plaintiffs'
11 Marc Jacobs Pretty Nylon Tote Trade Dress or Plaintiffs' Marc
12 Jacobs Scrambled Trademark;
- 13 C. Using false descriptions or representations including product
14 designs, shapes, colors or color combinations, materials, textures,
15 and the selection and arrangement of same tending to falsely
16 describe or represent Defendants' Infringing Products as being
17 Plaintiffs' products, or as being sponsored by or associated with
18 Plaintiffs, and from offering such goods into commerce;
- 19 D. Further infringing Plaintiffs' rights by manufacturing, producing,
20 distributing, circulating, offering for sale, selling, marketing,
21 advertising, promoting, displaying or otherwise disposing of any
22 products not authorized by Plaintiffs bearing any simulation,
23 reproduction, copy or colorable imitation of Plaintiffs' Marc
24 Jacobs Pretty Nylon Tote Trade Dress or Marc Jacobs Scrambled
25 Trademark;
- 26 E. Using any simulation, reproduction, copy or colorable imitation of
27 Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress or Marc
28 Jacobs Scrambled Trademark in connection with the promotion,

1 advertisement, display, sale, offering for sale, manufacture,
2 production, circulation or distribution of any unauthorized products
3 in such fashion as to relate or connect, or tend to relate or connect,
4 such products, or Defendants itself, in any way with or to
5 Plaintiffs, or to any goods sold, manufactured, sponsored or
6 approved by, or connected with, Plaintiffs;

7 F. Making any statement or representation whatsoever, or using any
8 false designation of origin or false description, or performing any
9 act, which can or is likely to lead the trade or public; or individual
10 members thereof, to believe that any products manufactured,
11 distributed, offered for sale or sold by Defendants are in any
12 manner associated or connected with Plaintiffs, or are sold,
13 manufactured, licensed, sponsored, approved or authorized by
14 Plaintiffs;

15 G. Manufacturing, distributing, offering for sale or selling products
16 that constitute an infringement of Plaintiffs' Marc Jacobs Pretty
17 Nylon tote bag, the Marc Jacobs Pretty Nylon Tote Trade Dress, or
18 the Marc Jacobs Scrambled Trademark, or unfairly competing with
19 Plaintiffs so as to damage Plaintiffs' reputations or goodwill
20 associated therewith;

21 H. Secreting, destroying, altering, removing, or otherwise dealing
22 with Defendants' Infringing Products, or any books or records
23 which contain any information relating to the importing,
24 manufacturing, producing, distributing, circulating, selling,
25 marketing, offering for sale, advertising, promoting, or displaying
26 of Defendants' Infringing Products; and

27 I. Effecting assignments or transfers, forming new entities or
28 associations or utilizing any other device for the purpose of

1 circumventing or otherwise avoiding the prohibitions set forth in
2 subparagraphs (A) through (H).

3 2. Directing that Defendants deliver up for destruction to Plaintiffs all
4 unauthorized products and advertisements in their possession or under their control
5 bearing Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress or Marc Jacobs
6 Scrambled Trademark or any simulation, reproduction, copy or colorable imitation
7 thereof, and all plates, molds, matrices and other means of production of same
8 pursuant to 15 U.S.C. § 1118.

9 3. Directing such other relief as the Court may deem appropriate to prevent
10 the trade and public from deriving the erroneous impression that Defendants, or any
11 products manufactured, sold or otherwise circulated or promoted by Defendants, are
12 authorized by Plaintiffs or are in any way related to Plaintiffs or Plaintiffs' products.

13 4. Requiring Defendants to pay to Plaintiffs such damages as Plaintiffs have
14 sustained as a consequence of Defendants' infringement and unfair competition with
15 respect to Plaintiffs' Marc Jacobs Pretty Nylon Tote Trade Dress and Marc Jacobs
16 Scrambled Trademark and to account for all gains, profits and advantages derived by
17 Defendants from the sale of its infringing products bearing the Marc Jacobs Pretty
18 Nylon Tote Trade Dress or Marc Jacobs Scrambled Trademark and that the award to
19 Plaintiffs be trebled as provided for under 15 U.S.C. § 1117.

20 5. Ordering that Plaintiffs recover the costs of this action together with
21 reasonable attorneys' and investigators' fees and prejudgment interest in accordance
22 with 15 U.S.C. § 1117.

23 6. That Plaintiffs be awarded punitive damages for Defendants' willful and
24 malicious acts of common law unfair competition.

25 7. Directing that this Court retain jurisdiction of this action for the purpose
26 of enabling Plaintiffs to apply to the Court at any time for such further orders and
27 interpretation or execution of any order entered in this action, for the modification of
28

1 any such order, for the enforcement or compliance therewith and for the punishment
2 of any violations thereof.

3 8. Awarding to Plaintiffs such other and further relief as the Court may
4 deem just and proper, together with the costs and disbursements which Plaintiffs has
5 incurred in connection with this action.

6
7
8 Dated: January 21, 2010

By: 

Anthony Keats
Keats McFarland & Wilson LLP
Attorneys for
Plaintiffs MARC JACOBS
TRADEMARKS, LLC, and MARC
JACOBS INTERNATIONAL, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Fernando M. Olguin.

The case number on all documents filed with the Court should read as follows:

CV10 - 456 CBM (FMOx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Anthony M. Keats (SBN 123672) akeats@kmwlaw.com
David K. Caplan (SBN 181144) dcaplan@kmwlaw.com
Konrad K. Gatien (SBN 221770) kgatien@kmwlaw.com
KEATS, MCFARLAND & WILSON LLP
9720 Wilshire Boulevard, Penthouse Suite
Beverly Hills, California 90212
Telephone: (310) 248-3830
Facsimile: (310) 860-0363

Document 1

Filed 01/21/2010

Page 21 of 24

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARC JACOBS TRADEMARKS, LLC, a Delaware
limited liability company, and MARC JACOBS
INTERNATIONAL, LLC, a Delaware limited
liability company,

PLAINTIFFS,

v.

NERVOUS TATTOO, INC., doing business as ED
HARDY, a California corporation, HARDY WAY,
LLC, a Delaware limited liability company, and THE
CALIFORNIA BAG, LLC, a California limited
liability company,

DEFENDANTS.

CASE NUMBER

CV-

CV10-00456-CBM(FMD)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorneys
Anthony M. Keats, David K. Caplan and Konrad K. Gatien, whose address is:

KEATS MCFARLAND & WILSON LLP
9720 Wilshire Boulevard, Penthouse Suite
Beverly Hills, California 90212
Telephone: (310) 248-3830
Facsimile: (310) 860-0363

an answer to the ☒ **complaint** ☐ **amended complaint** ☐ **counterclaim** ☐ **cross-claim** which is
herewith served upon you within twenty (20) days after service of this Summons upon you, exclusive of the day of
service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk, U. S. District Court

DATE: 21 JAN 2010

By

MARILEYN DAVIS
Deputy Clerk

(Seal of the Court)

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself ☐)
Marc Jacobs Trademarks, LLC and Marc Jacobs International, LLC

DEFENDANTS

Nervous Tattoo, Inc. d/b/a Ed Hardy; Hardy Way, LLC; and The California Bag, LLC

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Keats McFarland & Wilson LLP (SEE ATTACHMENT "A")
9720 Wilshire Boulevard, Penthouse Suite
Beverly Hills, California 90212; Tel.: (310) 248-3830

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 USC § 1125(a) Trade Dress Infringement, Federal Unfair Competition, False Designation of Origin

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input checked="" type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **CV10-00456**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Marc Jacobs Trademarks, LLC, New York Marc Jacobs International, LLC, New York

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Nervous Tatoo, Inc., Los Angeles County Hardy Way, LLC, Los Angeles County The California Bag, LLC, Los Angeles County	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date January 21, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Civil Cover Sheet
USDC, Central District of California

Marc Jacobs Trademarks, LLC, et al. v. Nervous Tattoo, Inc., et al.
Case No. 10-00456 CBM (FMOx)

ATTACHMENT "A"

1(b) Attorneys:

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